IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3751 OF 2006

The Kapol Co-op. Bank Ltd. ..Petitioner.
Vs.
Jaiprakash Prabhudas Mehta & Ors. ..Respondents.

....

Mr. K.M. Sangani for the Petitioner.
Mr. R.D. Dhanuka with Ms. V.M. Choudhary for the Respondents.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

7th June, 2006.

P.C. :

A decree for eviction has been passed against the Petitioner by the Court of Small Causes on 7th April, 2004 which has been confirmed in appeal by the Appellate Bench on 4th March, 2006. An application was filed before the Small Causes Court on behalf of the Petitioner stating that the Petitioner wishes to hand over possession to the Respondents and seeking time until 30th September, 2006 to vacate. At this stage also counsel appearing for the Petitioner states that the bank does not contest the decree for possession and that peaceful and vacant possession shall be handed over to the Respondents. However, time has been sought till 31st December, 2006. Since the bank filed an application as

recently as on 2nd May, 2006 before the Small Causes Court seeking time till 30th September, 2006, it would be appropriate and proper if time to vacate the premises until 30th September, 2006 is granted. There shall be an order accordingly.

On behalf of the Respondent, however, it has been submitted that the premises were taken on lease thirty years ago. The premises are situated in a prime commercial locality at Carnac Bunder, Mumbai and admeasure 1000 sq. ft and it has been submitted that pending the enquiry into mesne profits, some amount be determined by this Court and an order of deposit may be issued against the bank. Learned counsel fairly concedes that at this stage it would not be appropriate if the Respondents are permitted to withdraw the amount.

Having regard to the facts and circumstances of the case, while disposing of the Petition I am of the view that it would be appropriate to issue the following directions :

i) The Petitioner shall have time to vacate the premises until 30th September, 2006;

ii) This shall be subject to the condition that the Petitioner shall deposit an amount towards mesne profit calculated at the rate of Rs.10,000/- per month from the date of institution of the suit until 31st December, 2002; an amount calculated at the rate of Rs.12,000/- per month between 1st January, 2003 to 31st December, 2003; an amount calculated at the rate of Rs.15,000/- per month for the period from 1st January, 2004 to 31st December, 2004; an amount calculated at the rate of Rs.18,000/- per month for the period from 1st January, 2005 to 31st December, 2005 and an amount calculated at the rate of Rs.20,000/- per month from 1st January, 2006 until the premises are vacated in terms of the aforesaid directions. The amount shall be deposited within a period of two weeks from today;

iii) The amount thus deposited before the Small Causes Court shall not be permitted to be withdrawn by the Respondents, pending the conclusion of the enquiry into mesne profits and shall be credited towards the final amount that may be due and payable.

iv) The bank shall file the usual undertaking before this Court within a period of four weeks from today.